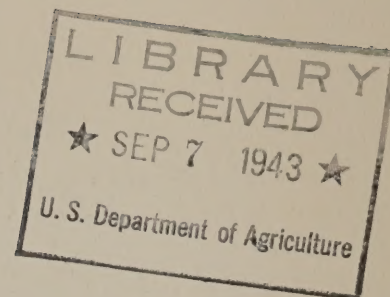


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NEW HAMPSHIRE STATE MILK CONTROL ACT

Paper No. 12. Series of State Milk Control Acts,  
Dairy Section, Agricultural Adjustment Adminis-  
tration, United States Department of Agriculture.

September 16, 1937.

## INTRODUCTION

This is the twelfth of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulation issued thereunder, and, in general, the legal developments in connection with their administration and enforcement.

The series, to date, includes a paper on each of the following State controls: Indiana, Alabama, Connecticut, California, New Jersey, Virginia, New York, Pennsylvania, Rhode Island, Vermont, and Massachusetts. Other papers are in process of preparation, there being at the present time some twenty States having milk control laws.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.



STATE MILK CONTROL IN NEW HAMPSHIRE  
THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

Emergency milk control legislation, enacted in 1935<sup>1/</sup> and declared unconstitutional in 1936<sup>2/</sup>, has now been succeeded by a permanent measure <sup>3/</sup> authorizing an agency termed the "Milk Control Board" "to supervise, regulate and control the production, distribution and sale of milk <sup>4/</sup> within the state." While the act contains no legislative finding or "declaration", so-called, three objectives are stated: (1) The powers of the board are premised on the desire "that no part of the state shall lose or have impaired its reasonable requirements of milk of a proper quality"; (2) in order to protect the public from the harm and economic loss it would sustain "if the production of milk was substantially curtailed," "the board shall secure the cooperation of those engaged in the industry to maintain fair and lawful trade practices;" (3) it shall be the board's duty to be informed at all times "as to the supply, production and quality <sup>5/</sup> of milk in the state that the public may be assured of an adequate daily production in the state of a proper quantity and quality."

Type of Governing Agency

The board consists of three members whose qualifications are not specified other than that no more than two of them shall be of the same political party. They are to be appointed by the Governor with the advice and consent of the Council, for a three-year term, except the first board, whose members shall be appointed for terms of one, two and three years, respectively. One member shall be designated as chairman by the Governor, and each shall be paid seven dollars a day, and his actual expenses, for such time as he is engaged "in the service of the state." The board, with the approval of the Governor and the Council, may employ and fix the salaries of a Secretary and such assistants as may be necessary.

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<sup>1/</sup> Chapter 21, Laws of 1935.

<sup>2/</sup> Case of Ferretti vs. State, q.v. Legal Status, PART TWO.

<sup>3/</sup> Approved May 19, 1937.

<sup>4/</sup> "Milk," as defined, "means fluid milk, cream, skim milk or buttermilk, fresh, sour or storage, irrespective of whether or not such milk is flavored."

<sup>5/</sup> Another duty, the purpose of which is not explicitly stated, is to be informed at all times "as to the transportation, processing, storage and distribution of milk sold, consumed or used in the state" - language broad enough to cover milk produced in the State though consumed elsewhere, and milk produced outside the State if consumed or used within the State.



### Conditions Under Which Powers of Board May Be Exercised

The board is authorized to exercise its powers to the full extent granted in the act, upon its own motion and without restraint or guidance by producers, distributors 6/ or others. Absent from this law is the "consent feature" contained in the act of 1935, under which the board could not lawfully exercise its power in any market 7/ except upon written application of a stated number and/or volume of the sellers or users of milk in the market. 8/

### Source of Financing

"For the purposes of this act," that is, for the financing of the board and its assistants in their activities, the sum of \$12,000 is appropriated for each of the fiscal years beginning July 1, 1937, and July 1, 1938, and the Governor "is authorized to draw his warrant for the same out of any money in the treasury not otherwise appropriated." All moneys received by the board from license fees and fines are required to be paid promptly into the State Treasury and made available, under the present act, not for the board but for the general revenue of the State.

### Statutory Protective Provisions

The act is strengthened by the inclusion of the following: (1) a partial invalidity (separability) clause declaring that if any provision of the act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to other persons and circumstances shall not be affected thereby; and (2) a declaration that nothing in the act shall be construed as applying to interstate or foreign commerce except as may be permitted by the Federal Constitution and laws enacted thereunder.

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6/ "Distributor," as defined, "means any person who produces and sells, or who purchases for sale or sells, more than two quarts of milk daily within the state for consumption, disposition or use within the state, except those who sell milk for consumption on the premises. A producer who delivers or sells milk to a distributor only shall not be deemed a distributor."

7/ "Market," as defined in both acts, "means any city, town or village, or two or more of the same designated by the board as a natural marketing area."

8/ Viz., 50 or more consumers, or of "a producers' and/or distributors' association supplying in the judgment of the board a substantial proportion of the milk consumed in such market or producers and/or distributors supplying a substantial proportion of the milk in the community in case there is no association in such community."



## II. Regulatory Provisions.

### Powers of the Board

Investigation.-- Broad powers of investigation are vested in the board and include the power (1) to conduct hearings where testimony, voluntary or under oath, may be taken; (2) to subpoena producers and distributors, or others, together with their books, records, documents, correspondence and accounts, and examine such persons under oath; (3) to enter and examine (any member of the board or its representative may do so) at all reasonable hours, all places where milk is produced, handled, distributed or sold and also examine all books and records kept on such premises. In granting these powers to the board the Legislature has sought to make possible its mandate that the board shall be informed at all times with respect to the various phases of the milk industry in the State. (cf. State Supreme Court's opinion, last two paragraphs of PART THREE)

Licensing powers.-- Only distributors in markets designated by the board are required to be licensed. In any such market every distributor must be licensed and pay annually a license fee of from \$2 to \$10, according to the quantity of milk sold within a range of two to 200 quarts daily, and when selling more than 200 quarts, pay an additional license fee of \$5 for each additional 100 quarts or fraction thereof. Some distributors may fail to receive licenses, for the board may, "upon proper evidence," decline to grant them. 9/ The board may also after due notice and public hearing, suspend or revoke a license already granted. Likewise the board is justified by the act in suspending, revoking, or withholding the license of any distributor who has violated "the provisions" of the act or any rule or regulation made thereunder, or who has been convicted of violating the health laws or regulations of the State Board of Health. Any distributor "who fails to take out a license" shall be subject to the penalties provided for in the act. 10/

Bonding of distributors under separate law.-- No reference is made in the act to the bonding of distributors required under a separate law. That law (Chapter 164 of the Public Laws and amendments thereto) provides that persons buying milk or cream within the State shall, with certain exceptions, be bonded or else make satisfactory showing as to real estate ownership in the State.

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9/ "Due notice and public hearing" are not required in this connection; in fact, private hearing is not mentioned, and it appears possible for the board under its own interpretation of the words "upon proper evidence," to decline to grant a license without meeting the applicant in person. See footnote 10.

10/ It will be seen under later paragraphs of this paper that the law provides opportunity for any distributor aggrieved or directly affected by an order or decision of the board, to apply for a "rehearing," and in the absence of satisfactory outcome to appeal by petition to the State Supreme Court. Since without a hearing there could be no rehearing, it is probable that the board would give a hearing to any distributor who was denied a license. Failure to do so might raise a question of "due process" violation.



Records and reports.-- All distributors in the State are or may be required to keep records and make reports under the board's direction, but a distinction is drawn between distributors "in any market specified by the board as one in which it is in the public interest to regulate the supply, production and quality of milk" and distributors in markets not specified in such manner. In the first case, the distributor "shall keep such records and make such reports as the board may reasonably require;" while in the latter case, the records shall be kept and the reports made "as the board may reasonably require to keep it informed at all times as to the adequacy of such supply, production and quality of milk." Publication of information secured by the board through examination of the distributors' records, reports etc., is not enjoined in the act. (cf. Court's opinion, last paragraph of PART THREE)

Cooperation with other authorities.-- The board is authorized by the act "to confer and agree" with legally constituted similar boards or authorities of other States, or with "agencias" of the Federal government, and to adopt necessary regulations "to effect a uniformity in regulation and assure an adequate and proper milk supply in New Hampshire."

Mediation and arbitration.-- Although the act provides that the board "shall secure the cooperation of those engaged in the industry to maintain fair and lawful trade practices, "mediation" and "arbitration" are words not found in the statute. (cf. Court's opinion, next to last paragraph of PART THREE)

#### Powers in Regard to Price Regulation

Prices to be paid producers and to be charged by distributors.-- The situation under which the board is authorized to proceed to fix prices of milk and otherwise to regulate the selling of milk is identical with the provision in the Vermont milk control law 11/ with respect to the initial step to be taken. That is, the board must first determine, either upon complaint or its own initiative, after public notice and hearing, "that the public health is menaced, jeopardized or likely to be impaired or deteriorated by the loss or substantial lessening of a supply of proper quality in a specified market." Next, the board "as long as such condition is found to prevail in such market," is required by the act to fix "the just and reasonable minimum or maximum prices, or both, that shall be paid producers or associations of producers by distributors, and the manner of payment and the prices charged consumers and others for milk by distributors." Unlike the Vermont milk control act, which specifically required the board to consider the balance between production and consumption of milk, costs of

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11/ This law is outlined in Paper No. 10 - Series on State Milk Control Acts, issued June 11, 1937. Comparison of the Vermont and New Hampshire acts shows that they are decidedly similar in many respects.



production and distribution, buying power of the public, etc., the only test here is that the prices fixed shall be "just and reasonable." Such prices need not be uniform in all markets and they may be changed from time to time "after such notice and public hearing as deemed by the board in the public interest."

Method of payment to producers.- The language of the act authorizing and making mandatory the fixing of prices includes the power and duty to "fix... the manner of payment" to producers and their associations. To what extent this power may be exercised can be determined only by a study of the law as a whole. The act contains no reference to market-wide pooling of milk either with or without ratings, nor to ratings apart from such pooling, and without specific authorization in the law to establish such devices for equitably apportioning returns to producers, it would appear possible for the board to provide only for payment on the basis of the individual distributor pool and/or on that of the flat-price payment. These latter methods seem justified, for the reason that the board may accept, or establish and define, "classes and grades of milk" and "shall specify to what classes or grades the prices...shall apply." In cases where the board prices the milk in a market according to its class, and use in such class, the manner of payment would probably be that of the individual-distributor pool. 12/

#### Unfair Competition and Trade Practices

"Unfair trade practices," "unfair competition," are terms not found in the act, and the board is not specifically empowered to adopt measures for the elimination of these evils. At the same time it will be recalled that the board "shall secure the cooperation of those engaged in the industry to maintain fair and lawful trade practices," (it is assumed that this means "shall seek to secure," etc.), and it might be pointed out that in actual application by milk control authorities working to secure the cooperation "of those engaged in the industry," the establishment of fair trade practices often consists in defining certain practices as unfair. 13/

#### Limitations and Exceptions

An important limitation upon the board's scope of authority is the provision that its authority shall supplement but not be in lieu of (1) existing laws relating to the transportation, inspection and testing of milk; (2) laws relating to the powers of the Public Service Commission, the State

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12/ Producers' cooperatives, properly organized, are not denied the right to pool the milk of their members. See "Status of Cooperative Associations of Producers," below.

13/ When such is the case it is apt to be true that the law under which the State authority is working, specifically declares certain acts or practices unlawful. Such is not the case in the New Hampshire law; there are no "shall not" provisions in the statute. See "Violation", below.



Board of Health and local health ordinances and regulations; and (3) "the requirements" of the act relating to inspection, sale, etc., of dairy products (Chapter 163 of the General Laws), and of the milk and cream buyers bonding law, referred to above. Another limitation is with respect to the blending and distributing of proceeds by cooperatives (q.v. under heading for cooperatives, below). Excepted from the definition of distributor is any person who sells "milk 14/ for consumption on the premises," and a producer who delivers or sells milk to a distributor only.

#### Violation

Unlawful acts.— The words "unlawful" or "a misdemeanor," as applied to any act by a distributor, are absent from this law. It may be assumed, however, that an act is unlawful when for its commission a penalty of fine or imprisonment is provided.

Penalties.— Fine not exceeding \$100, or imprisonment for not more than one year, or both, are the penalties for anyone who (1) violates any provision of this act or order thereunder, or of any rule or regulation of the board made thereunder; (2) fails to answer a subpoena or testify before the board; or (3) being a distributor, fails to take out a license as required in the law.

#### Legal Remedies

Board.— The procedure to be followed by the board in securing enforcement of the law or rules and regulations made thereunder, or in prosecution of violations, is not specified in the act. Presumably, in the absence of an appeal, as provided in the act, from "any order or decision" of the board, prosecution could be made in a court of applicable jurisdiction, especially in the case of a violation of any provision of the act as distinguished from an "order or decision" of the board. But it is uncertain as to the course of action, in the event that appeal were taken by the violator directly to the State Supreme Court in the manner so amply set forth in the statute. In such instance would the board have a remedy by injunction in the nature of a temporary restraining order? This question only the court or courts can with certainty answer.

Aggrieved persons <sup>15/</sup>— Rights of any person deeming himself affected by "an order or decision" of the board are carefully provided for in the statute; the procedure for application of a rehearing before the board, the filing and manner of appeal after denial or granting of such rehearing, the placing of the burden of proof upon the appellant, the admission of new or additional

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<sup>14/</sup> Presumably this would be construed to read: "Milk only for consumption on the premises."

<sup>15/</sup> With respect to the rights of aggrieved persons the New Hampshire and Vermont acts are practically identical.



evidence, etc., are elaborated in 20 of the 36 sections contained in the act. 16/ Rehearing may be granted by the board upon motion made within 20 days after the applicable order or decision and if in the opinion of the board good reason is stated in the motion. Grounds for such motion are that the action of the board is unlawful or unreasonable. Within 10 days after filing of such motion, the board shall either grant or deny the motion, or suspend the order or decision complained of. Appeal may be taken to the Supreme Court, if brought within 30 days following the board's denial or admission of rehearing. Appeal shall not be considered by the court until the petitioner has paid the board 10 cents per folio of 100 words for a copy, and five cents per folio for manifold copies, of the record (and of such testimony and exhibits as shall be transferred) required to be filed in the case.

Upon the hearing before the Supreme Court, the burden of proof rests on the petitioner seeking to set aside any order or decision of the board, the ground being that such order or decision is "clearly unreasonable and unlawful." "All findings of the board upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless it clearly appears that such order is unjust and unreasonable." Nor shall new or additional evidence be introduced except under certain exceptional circumstances, in which case it may be taken before a single justice "or otherwise", and the court shall "upon the motion of any party", cause a copy of "such new evidence" to be transmitted to the board, and all proceedings shall be stayed for 20 days from the date of such transmission. Final judgment upon every appeal shall be a "decree" either dismissing the appeal, or vacating the order complained of, in whole or in part as the case may be. In case of the latter, the Court may in its discretion remand the matter to the board for such further proceedings not inconsistent with the "decree," "as in the opinion of the board justice may require."

The act permits no proceeding, other than the appeal herein stated, to be maintained in any court of the State to set aside, enjoin the enforcement of, or otherwise review or impeach any order of the board; nor shall appeal or other proceedings taken from an order of the board suspend the operation of such order pending final determination by the Supreme Court, unless "in the opinion of the court, justice requires such suspension."

#### Status of Cooperative Associations of Producers

The act provides that a "producers' cooperative, organized under chapter 224 of the Public Laws or similar laws of other states," shall not

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16/ In the Act of 1935 there was no provision of any sort regarding rehearing before the board or appeal to any court from an order of the board.



be prohibited from blending the proceeds "from the sale 17/ of its milk" in all markets and in all classifications and distributing such proceeds to its members "in accordance with a contract with its members;" nor be denied the right to make authorized deductions from sums due members. No reference is made to any relationships which might exist between such cooperative and non-member producers.

## PART TWO

### 1. Administrative Procedure, Rules, Regulations and Orders.18/

Extent of authority exercised in State.-- Within a few months after the passage of the Act of 1935, the Board, in the manner required by the law, namely upon petition of the applicable elements in the milk industry, or of consumers, had extended control through its licensing and price-fixing powers over 32 markets.

Persons controlled or affected.-- Distributors in "controlled markets," that is, markets designated by the board as "natural marketing areas," were required to be licensed, pay annual license fees and monthly assessments, and pay producers and charge consumers and other distributors the prices that had been determined and fixed by the board. Producers in controlled markets also were required to pay assessments upon the volume of milk sold by them to distributors. The total assessment per hundred pounds of milk sold in the market was one cent, half of which was paid indirectly by the producer, since the distributor was ordered to make such deduction from the net price due his producers each month. Producer-distributors were required to pay annual license fees, and assessments, in their dual roles of producers and distributors, of one cent per hundredweight on all milk sold by them in the controlled market for fluid consumption other than to a distributor. In addition, all stores in controlled markets were required to be licensed and pay annual license fees.

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17/ If the selling is done by the cooperative as indicated here, it would appear that such cooperative comes under the definition of distributor. For a distributor, among other things, is (by a substitution of terms) "any co-operative association who sells more than two quarts of milk daily within the state for consumption, disposition or use within the state..." Under this interpretation the board is required to license such cooperatives in any market designated by the board, with license fee increasing \$5 for each 100 quarts sold daily above 200 quarts. The sale, it is to be noted, shall be a "daily" sale--a qualification which applies to all distributors.

18/ The present act is of so recent a date that the discussion of administrative procedure is addressed to activities, as shown by available data, under the Act of 1935.



Classification for purpose of price determination.-- The Act of 1935 did not specifically authorize the fixing of prices to producers on a class-use basis. It might, under the procedure provided for in the law, "fix just and reasonable minimum wholesale and retail prices" and fix different minimum prices for "different grades of milk" and also "fix just and reasonable minimum prices to be paid producers by distributors." What the board did was (1) establish schedules of resale prices, retail and wholesale, for bottle milk and bottle cream and, in some markets, buttermilk as well; (2) fix prices to be paid producers by distributors for (a) "milk sold as fluid" and (b) "milk for separating and sold as cream." In some markets the schedule for producers established the classification through a price fixed for "fluid milk delivered at the dealer's plant," and a lower price for "all surplus." In such cases the surplus price was that "established by the Boston Milk Market Administrator" for the zone in New Hampshire in which the controlled market was located.

Method of payment: no base-rating or market-wide pooling.-- It appears from data at hand that the method of payment by distributors to producers was simple, viz., pay the prices determined and fixed by the board as "just and reasonable," and in some if not all markets pay within 25 days after the end of the pay period. The Act of 1935 did not authorize the board to establish base-rating or market-wide pooling, and these plans of payment were not provided for in the orders, rules or regulations of the board.

Trade practices.-- It is believed, since the act itself contained similar language, that the prohibition, contained in "Finding and Ruling" for the Concord market (Area No. 6), was issued with respect to the other controlled markets in the State; namely, that "No discounts, rebates, free merchandise, price concessions or devices of any nature which will reduce the fixed minimum price will be allowed."

Records and reports.-- Under the 1935 law, all distributors in any market designated by the board were required to keep "such records and make such reports" as the board might direct. To what extent the board exercised its authority in such respect is unknown.

### PART THREE

#### Legal Status

Act of 1935 held unconstitutional.-- In the case of Ferretti v. Jackson 188 Atl. Rep. 474, the State Supreme Court, on December 1, 1936, declared the Act of 1935 unconstitutional, and rendered judgment for the plaintiffs. In its decision the Court devoted its attention largely to the question of delegation of legislative authority.



"A law," the Court declared, "is invalid when its commands are in such broad terms as to leave the enforcement agency with unguided and unrestricted discretion in the assigned field of its activity." The law it "regarded as defective in its insufficiency of a declared policy and of a prescribed standard by which the authority delegated may be measured and effect given to the prohibition against the making of general laws by administrative boards or agencies. ...the milk control act grants such a sweeping and general delegation of power that it clearly exceeds constitutional limits. If an industry may be validly selected for regulatory control, in a policy to improve its condition, it may not be done in so skeletonized a manner as has here been pursued. The extent and limits of control must be determined by the legislature."

The Court pointed out that the act showed "no purpose of being a health measure." "The act," said the Court, "expressly provides that the board's exercise of regulation and control shall not 'affect existing laws relating to milk inspection, the testing of milk and milk products, or to the powers of the state board of health relative to public health, or local health ordinances and regulations.'" <sup>19/</sup> Continuing, the Court said: "The remaining declaration of its aim to do away with 'unfair and demoralizing practices relative to the distribution and sale of milk' indicate no concern for public health.... What practices are thought to be 'unfair' and what 'demoralizing', the act does not specify. It is construed not to refer to illegal practices. No reason is perceived for concluding that regulatory control of the industry, including minimum price fixing, is needed for their suppression. The probable reference is to legal conduct, in one or more ways, having disruptive effect in the milk industry. In the absence of recital of the criticized conduct, presumably competition to the extent that the business of the industry was being conducted at less than a fair profit, was in mind. Other conduct also may well have been. Methods of operation affecting costs of production and distribution, advertising, credits, and disposal of surplus supplies may be cited as possible items. It follows that the legislature, failing to point out the practices considered unfair and harmful, has by necessary implication left it to the board to determine them.... In brief, it was vested with power to do what it thought expedient in the suppression of methods of business it might consider harmful...." The Court also said in substance that power to order a code of fair practices was fairly implicit in another aspect of the act. Such a code, "although a body of law," would be "for the board's decision both as to its making and as to its terms," rather than, as was constitutionally necessary, under definition and/or rules of guidance laid down by the legislature.

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<sup>19/</sup> In the Act of 1937 this wording is changed to read: "The authority herein conferred shall supplement and be in addition to but not in lieu of the existing laws relating to" inspection and testing of milk, the state board of health, etc. See "Limitations and Exceptions," above.



The Court gave a rather definite lead to those who desired that further milk control legislation be enacted by declaring: "Determination of the need of particular action and of the character and form of action may be delegated, if the policy and standard for action have been announced with adequate completeness." Furthermore, the marked contrast between "the general law in regulation of railroads and utilities" and the milk control act of 1935 was pointed out by the Court in the following helpful manner: "If all laws vesting specific powers in the public service commission were repealed and a single law enacted vesting in it full and unrestricted control over railroads and utilities with no listing or enumeration of methods of control or of the matters to be subject to control, it would make a situation practically parallel with that here presented."

In conclusion, the Court stated that decision was not required and was inexpedient in respect of the power of the Legislature "to provide for regulatory control over industries and businesses in general to the extent of fixing prices for products and sales," in view of its conclusion of "an un-permitted delegation of legislative power."<sup>20/</sup> The Court in this connection said: "Economic conditions bear upon the problem, and a change in them might alter a conclusion based upon existing conditions, thus tending to defeat any value of a present decision as a precedent."

State Supreme Court's opinion with respect to present act.-- On March 1, 1937, the State Supreme Court made answer to an inquiry of the House of Representatives of the State of New Hampshire concerning the constitutionality of House Bill No. 380, a bill embodying in every essential feature the present milk control act. In most respects the Court held that the act did "not violate any provision of the State constitution." It found nothing unconstitutional in the section authorizing the board to fix prices for milk and declared that the "policy and standard of action have been announced with adequate completeness" (quoting from its decision in Ferretti v. Jackson, supra). The power of the board to establish prices, the Court said, "is dependent on the prevalence of an economic condition injurious to public health in a definite marketing area, and the existence of this condition in such area must first be found as a fact after public notice and hearing; the prices fixed by the board are not permanent but may be changed when the

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<sup>20/</sup> Earlier in its decision the Court, commenting upon milk control acts which had been sustained elsewhere, said: "So far as the cases upholding their validity have been examined, a full determination of the policy and standard of the legislature has been found, or the question of delegation has been unconsidered or, as it is thought, inadequately considered. In the Nebbia cases (People v. Nebbia, 262 N.Y. 259; Nebbia v. New York, 291 U.S. 502) the statute, with an extended declaration of policy, required the control board to fix both minimum and maximum prices, and the cases do not discuss the issue of delegation."



public interest demands." Authority to license milk dealers and require the payment of license fees, as required by the act, was also upheld.21/

On the other hand, sections 5, 10 and 13 of the act were challenged. Insofar as they "purport to confer upon the board general authority to regulate and control the milk industry they are invalid as comprising an unrestricted delegation of legislative power," the Court declared. Section 5 contains, among other things, the provision (a) that "the board shall have power to supervise, regulate and control the production, distribution and sale of milk within the state," and (b) that "the board shall secure the co-operation of those engaged in the industry to maintain fair and lawful trade practices;" section 10 authorizes the board (a) "to make orders hereunder, conduct hearings, subpoena and examine under oath producers and distributors, their books, records, documents, correspondence and accounts, and any other person it deems necessary to carry out the purposes and intent of this act,"22/ and (b) to "adopt, promulgate and enforce such reasonable rules and regulations as are deemed necessary to carry out the provisions of this act;" section 13 relates to conferences and agreements with legally constituted authorities, State and Federal.23/

In addition to its interpretation of sections 5, 10 and 13, the Court narrowed the authority of the board with respect to its power, under section 9, "to examine (in the words of the Court) all the books and records of a distributor." This authorization, the Court said, "is understood to refer to such books and records as the board may reasonably require the distributor to keep. The granting of any wider authority would be questionable."24/

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21/ The Court said it entertained "some doubt, however, as to the reasonableness of the provision which specifies two quarts as the maximum amount of milk that a distributor may sell daily in the marketing area without license,"

22/ cf. "Investigation.-", PART ONE.

23/ cf. "Cooperation with other authorities.-", PART ONE.

24/ cf. "Records and reports.-", PART ONE.